

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

LARRY PORTER,

Plaintiff,

**9:12-CV-0138
(MAD/ATB)**

v.

SHEILA SAUVE, et al.,

Defendants.

APPEARANCES:

**LARRY PORTER
88-A-4542**

Upstate Correctional Facility
P.O. Box 2001
Malone, New York 12953
Plaintiff *pro se*

**MAE A. D'AGOSTINO
United States District Judge**

DECISION and ORDER

By Decision and Order of this Court filed March 15, 2013, Plaintiff was afforded until April 15, 2013 to pay the filing fee if he wished to avoid dismissal of this action. *See* Dkt. No. 16. This final extension of the filing fee payment deadline was granted on the basis of Plaintiff's claim that his petition for rehearing of the denial of his petition for writ of certiorari was pending in the Supreme Court, and that a stay of his payment obligation was therefore warranted. *See id.* at 2-3.¹ The Court

¹ Plaintiff was first ordered to pay the filing fee for this action in March of 2012, upon the denial of his application for *in forma pauperis* status pursuant to 28 U.S.C. § 1915(g). *See* Dkt. No. 6. The payment deadline was stayed pending Plaintiff's interlocutory appeal to the United States Court of Appeals for the Second Circuit, and pending his petition to the United States Supreme Court for a writ of certiorari. *See* Text Order filed Jan. 9, 2013 (D'Agostino, D.J.).

extended the filing fee payment deadline notwithstanding the fact that the publicly available docket for *Porter v. Sauve*, No. 12-6804 (U.S. Sup. Ct.) did not reflect any activity in the matter subsequent to January 7, 2013, the date on which Plaintiff's petition for a writ of certiorari was denied. *See id.*; see <http://www.supremecourt.gov>.

Plaintiff has not paid the filing fee. By letter dated April 11, 2013, Plaintiff appears to contend that his petition is pending in the Supreme Court and that his payment obligation should be stayed. *See* Dkt. No. 17.

The Court has again reviewed the Supreme Court docket for *Porter v. Sauve*, No. 12-6804. The most recent entry on that docket is dated January 7, 2013, and reads: "Petition DENIED." *See* <http://www.supremecourt.gov>. No other activity is noted.²

Based upon the foregoing, the Court finds that Plaintiff has failed to comply with the Court's direction that he pay the filing fee and that no reasonable basis exists for excusing Plaintiff's noncompliance.

WHEREFORE, the Court hereby

ORDERS that this action is **DISMISSED without prejudice** due to Plaintiff's failure to pay the filing fee as directed by this Court; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Decision and Order on Plaintiff.

IT IS SO ORDERED.

Dated: May 3, 2013
Albany, New York


Mae A. D'Agostino
U.S. District Judge

² The Clerk of the Court is directed to append to this Decision and Order a copy of the Supreme Court docket report for *Porter v. Sauve*, No. 12-6804 bearing today's date.